IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 204 of 2003 (S/B)
&
Writ Petition No. 198 of 2003 (S/B)
&
Writ Petition No. 207 of 2003 (S/B)

COMMON JUDGMENT

Date of decision: 20th May, 2005

A.F.R. (Approved for Reporting)
_____
Not Approved for Reporting

Date Initials of Judge

Note. Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 204 of 2003 (S/B)

&

Writ Petition No. 198 of 2003 (S/B)

&

Writ Petition No. 207 of 2003 (S/B)

COMMON JUDGMENT

Writ Petition No. 204 of 2003 (S/B)

Kamal Singh Verma,
S/o Sri Prem Singh Verma,
At present posted as Junior Engineer,
District Rural Development Agency,
District Almora. …… Petitioner

Versus

1. State of Uttaranchal
   through Secretary,
   Rural Development, Uttaranchal, Dehradun.
2. Chief Development Officer,
   Almora. ……. Respondents

Writ Petition No. 198 of 2003 (S/B)

Veer Singh,
S/o Sri Laxman Singh,
R/o Deena Lodge Compound,
Near China Baba Mandir, Mallital,
District Nainital. …… Petitioner

Versus

1. State of Uttaranchal
   through Secretary,
   Rural Development, Uttaranchal, Dehradun.
2. Chief Development Officer,
   Nainital. ……. Respondents

Writ Petition No. 207 of 2003 (S/B)

D.D. Raturi,
S/o Sri Govind Ram Raturi,
At present posted as Junior Engineer,
District Rural Development Agency,
District Uttarkashi. ……. Petitioner

Versus

1. State of Uttaranchal
through Secretary,
Rural Development, Uttaranchal, Dehradun.
2. Chief Development Officer,
Uttarkashi. …… Respondents

Mr. R.P. Nautiyal, Advocate for the petitioners.
Mr. J.P. Joshi, Addl. Chief Standing Counsel for the respondents.

Coram: Hon. Cyriac Joseph, C.J.
Hon. M.M. Ghildiyal, J.

ORAL JUDGMENT: (Per Hon'ble the Chief Justice)

1. Since a common question arises in these writ petitions, they were heard together and are being disposed of through this common judgment.

2. The petitioners in these writ petitions are Junior Engineers working in the District Rural Development Agency (DRDA) of different districts in the State of Uttaranchal. The petitioner in Writ Petition No. 198 of 2003 (S/B) is working as Junior Engineer in the DRDA of Nainital District. The petitioner in Writ Petition No. 204 of 2003 (S/B) is working as Junior Engineer in the DRDA of Almora District. The petitioner in Writ Petition No. 207 of 2003 (S/B) is working as Junior Engineer in the DRDA of Uttarkashi District.

3. According to the petitioners, the Junior Engineers in the DRDA are entitled to be promoted to the cadre of Assistant Engineers. In fact, the petitioners were promoted to the cadre of Assistant Engineers along with 17 other Junior Engineers as per an order dated 07.04.2000

passed by the Government of U.P. prior to the creation of the State of Uttaranchal. But those promotions were stayed by the High Court of Allahabad on 10.04.2000 in Writ Petition No. 458 of 2000 (S/B) filed by one Anoop Rai Jain and five others. In the said order dated 10.04.2000, the High Court of Allahabad directed that the Junior Engineers promoted as per the impugned order shall not be allowed to join as Assistant Engineers. Consequently, the promotions of the petitioners were not given effect to. Thereafter, the new State of Uttaranchal was created on 09.11.2000. At that time, the petitioners were working in the districts included in the State of Uttaranchal. The grievance of the petitioners is that even though they are the senior most Junior Engineers in the DRDA of the district in which they are working and vacancies of Assistant Engineers are in existence and the petitioners are discharging the functions of Assistant Engineers, they are not being promoted to the cadre of Assistant Engineer on account of the interim order passed by the High Court of Allahabad in Writ Petition No. 458 of 2000 (S/B). According to the petitioners, the said order passed by the High Court of Allahabad cannot any more stand in the way of the promotion of the petitioners as Assistant Engineers.

4. Writ Petition No. 458 of 2000 (S/B) was filed by six Investigators (Technical) working in the DRDAs in the State of U.P. They are still working in the State of U.P. and they have not opted for the State of Uttaranchal and they have no claim for any post of Assistant Engineer in the State of Uttaranchal. Even under the rules in force in the State of U.P., Investigators (Technical) are not eligible for promotion as Assistant Engineer and in the above-mentioned writ petition filed before the High Court of Uttaranchal, the demand of the petitioners is to make provision for promotion of the Investigators (Technical) to the cadre of Assistant Engineer. The petitioners herein have not been made parties to the writ petition before the High Court of Allahabad. In such circumstances, the petitioners contend that the order dated 10.04.2000 passed by the High Court of Allahabad cannot prevent the Government of Uttaranchal from giving promotion to the

petitioners as Assistant Engineers if they are otherwise eligible and entitled for such promotion. The petitioners have filed these writ petitions praying for a direction to the respondents to allow the petitioners to join the post of Assistant Engineer in the District Rural Development Agency in which they are working on the basis of the order dated 07.04.2000 passed by the Government of U.P.

5. Counter affidavits have been filed by the respondents in Writ Petition Nos. 198 of 2003 (S/B) and 204 of 2003 (S/B) raising identical contentions. Though no separate counter affidavit has been filed in Writ Petition No. 207 of 2003 (S/B), Mr. J.P. Joshi, learned Addl. Chief Standing Counsel submitted that the respondents are adopting, in that case also, the averments contained in the counter affidavits filed in the other two cases.

6. In the counter affidavits filed by the respondents it is not disputed that the petitioners are working in the cadre of Junior Engineers in the DRDAs of the districts included in the State of Uttaranchal. It is also not disputed that the petitioners are the senior most Junior Engineers in the DRDA of the district concerned. The respondents have no case that the petitioners are not eligible for promotion to the cadre of Assistant Engineer or that the Government do not want to make promotions to the cadre of Assistant Engineer. The respondents have only two objections against the promotion of the petitioners to the cadre of Assistant Engineer. The first objection is that in view of the order dated 10.04.2000 passed by the High Court of Allahabad in Writ Petition No. 458 of 2000 (S/B), the respondents are not in a position to give effect to the petitioners' promotions ordered by the Government of U.P. on 07.04.2000. The second objection is that in view of the interim orders passed by this Court in Writ Petition No. 4758 (S/S) of 2001 staying all promotions in DRDAs, the respondents cannot make any promotions in the DRDAs.

7. We shall first consider the second objection raised by the respondents. The said objection is no more valid in view of the fact that Writ Petition No. 4758 (S/S) of 2001 has already been disposed of by this Court today and all the interim orders passed in that case stand vacated. Therefore, the second objection cannot hold good any more.

8. Coming to the first objection of the respondents, we are inclined to agree with learned Addl. Chief Standing Counsel Mr. J.P. Joshi that on the face of the order dated 10.04.2000 passed by the Allahabad High Court in Writ Petition No. 458 of 2000 (S/B), the Government cannot give effect to the promotion order dated 07.04.2000 passed by the Government of U.P. But that does not mean that the Government of Uttaranchal cannot independently consider the case of the petitioners for promotion and pass appropriate orders in the changed circumstances. As rightly pointed out by Mr. R.P. Nautiyal, learned counsel for the petitioners, the claim of the petitioners in Writ Petition No. 458 of 2000 (S/B) pending before the High Court of Allahabad is in respect of promotions against the vacancies of Assistant Engineer in the State of U.P. They have no claim in respect of the vacancies of Assistant Engineer in DRDAs in the State of Uttaranchal. After the creation of the new State of Uttaranchal on 09.11.2000, the Government of Uttaranchal alone is competent to make appointments against the vacancies in the State of Uttaranchal. The order dated 10.04.2000 passed by the Allahabad High Court in Writ Petition No. 458 of 2000 (S/B) can apply only to the vacancies in the State of U.P. and it can bind only the Government of U.P. It is also to be noted that the State of Uttaranchal is not a party to Writ Petition No. 458 of 2000 (S/B). Therefore, inspite of the order dated 10.04.2000 passed by the High Court of Allahabad in Writ Petition No. 458 of 2000 (S/B) restraining the respondents therein from giving effect to the promotions ordered on 07.04.2000 by the Government of U.P., the State of Uttaranchal is entitled to make appointments against the vacancies of Assistant Engineers in DRDAs

in the State of Uttaranchal. In this view of the matter, we are inclined to direct the competent authority to consider the case of the petitioners for promotion as Assistant Engineers.

9. Hence, the writ petitions are disposed of with a direction to the competent authority among the respondents to consider the case of the petitioners for promotion to the cadre of Assistant Engineer in the DRDA concerned in accordance with the rules and to pass appropriate orders as expeditiously as possible and at any rate, within a period of six weeks from the date of receipt of a copy of this judgment.

10. The petitioners may produce a copy of this judgment before the competent authority for information and compliance.

(M.M. Ghildiyal, J.) **(Cyriac Joseph, C.J.)**
20.05.2005 **20.05.2005**

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